

**EXPLANATORY MEMORANDUM TO
THE CAYMAN ISLANDS CONSTITUTION ORDER 2009**

2009 No. 1379

1. This explanatory memorandum has been prepared by the Foreign and Commonwealth Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument establishes a new Constitution of the Cayman Islands. The new Constitution includes, for the first time, a Bill of Rights setting out the fundamental rights and freedoms of the individual and provisions for their enforcement. It provides for a Governor as Her Majesty's representative in the Islands, and for a Premier and other Ministers who form a Cabinet together with the Deputy Governor and the Attorney General. It provides for an elected Legislative Assembly, which together with Her Majesty forms the Legislature. It provides for a Grand Court and a Court of Appeal as superior courts, and a Judicial and Legal Services Commission to advise on judicial and senior legal appointments. Provision is also made for a Human Rights Commission, a Commission for Standards in Public Life, and a Constitutional Commission. A new National Security Council is established, as is the new office of Director of Public Prosecutions. Provision is also made for the public service, public finance, a Complaints Commissioner, a Register of Interests, and freedom of information.

2.2 This instrument replaces the Cayman Islands Constitution Order 1972 (as amended), to which the current Constitution is scheduled.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None.

4. Legislative Context

4.1 The current Constitution of the Cayman Islands is scheduled to the Cayman Islands (Constitution) Order 1972 (S.I. 1972/1101), as amended by the Cayman Islands (Constitution) (Amendment) Order 1984 (S.I. 1984/126), the Cayman Islands (Constitution) (Amendment) Order 1987 (S.I. 1987/2199), the Cayman Islands (Constitution) (Amendment) Order 1992 (S.I. 1992/226), the Cayman Islands (Constitution) (Amendment) Order 1993 (S.I. 1993/3143), the Cayman Islands (Constitution) (Amendment) Order 2003 (S.I. 2003/1515), the Cayman Islands (Constitution) (Amendment) Order 2004 (S.I. 2004/2029), the Cayman Islands (Constitution) (Amendment No.2) Order 2004 (S.I. 2004/2673) and the Cayman Islands (Constitution) (Amendment) Order 2008 (S.I. 2008/3127). This instrument, which has a new Constitution for the Islands scheduled to it, will revoke and replace the 1972 Order and the amending Orders. This instrument, like the 1972 Order and the amending Orders, is made under sections 5 and 7 of the West Indies Act 1962.

The Constitution is being replaced following constitutional negotiations between the United Kingdom Government and the Cayman Islands Government, which resulted in agreement to the Constitution scheduled to this instrument.

4.2 In 2002, the Chairman of the Foreign Affairs Committee and the Foreign Secretary agreed that, where appropriate, draft Orders on Overseas Territories Constitutions would be shown to the Committee for information, if possible 28 days before they were made. This instrument and accompanying Memorandum were sent to the Committee on 21 April 2009.

5. Territorial Extent and Application

This instrument applies to the Cayman Islands.

6. European Convention on Human Rights

Although this instrument is laid before Parliament, there is no provision for further parliamentary proceedings and no statement is therefore required.

7. Policy background

- *What is being done and why*

7.1 This instrument has the objective of providing a new, modernised, Constitution for the Cayman Islands.

- *Consolidation*

7.2 In its 1999 White Paper “Partnership for Progress and Prosperity - Britain and the Overseas Territories”, the United Kingdom Government noted that there was great diversity within the Overseas Territories in terms of their size, population, economic developments and other factors, but that there was “a degree of coherence and similarity in the constitutional and institutional arrangements in place for [the Territories’] government and administration”. The United Kingdom Government therefore encouraged individual Territories “to review their own structures and arrangements in line with the idea of a new modern partnership” with the United Kingdom. The Cayman Islands Government initiated a review of their Constitution, which subsequently led to negotiations with the United Kingdom Government on the terms of a possible new Constitution. A new Constitution was agreed following three rounds of negotiation between the United Kingdom and Cayman Islands Governments in September 2008 and January and February 2009.

8. Consultation outcome

The Constitution scheduled to this instrument was put out for public consultation in the Cayman Islands from February until May 2009, as the United Kingdom Government wanted to be assured that it had the broad support of the people of the Islands. The text of the new draft Constitution was approved at a referendum in the Cayman Islands on 20 May 2009. Almost 73% of the electorate voted and the draft

Constitution was approved by 62.66% thereof. No consultation in the United Kingdom was required as this Order forms part of the law of the Cayman Islands, not the United Kingdom.

9. Guidance

No guidance is required in the United Kingdom. The Cayman Islands Government produced guidance on the draft Constitution scheduled to this instrument to assist the public in the Cayman Islands in understanding the draft Constitution prior to the referendum.

10. Impact

An impact assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies in the United Kingdom. It also has no impact on the United Kingdom public sector.

11. Regulating small business

The instrument does not apply to small business in the United Kingdom.

12. Monitoring & review

The changes reflected in the new Constitution are politically important, as they provide for a greater degree of internal self-government of the Islands, and therefore reflect the more modern relationship which now exists between the United Kingdom and the Islands. Although the Constitution scheduled to this instrument, as the Constitution of the Cayman Islands, will be continuously monitored, there is no current plan to undertake a structured review of it at any specific point in the future.

13. Contact

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